IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 10TH DECEMBER 2007 / 19TH AGRAHAYANA 1929

ST.Rev..No. 399 of 2006

TA.290/2005 of S.T.A.T.ADDL.BENCH,ERNAKULAM
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REVISION PETITIONER/RESPONDENT/REVENUE:

STATE OF KERALA,
REP.BY JOINT COMMISSIONER (LAW) IN-CHARGE,
COMMERCIAL TAXES,
ERNAKULAM.

BY SPL.GOVERNMENT PLEADER SRI. VINOD CHANDRAN.

RESPONDENT/APPELLANT/ASSESSEE:

M/S. PHILIPS CARBON BLACK LTD.,
ERNAKULAM.

BY ADV. SRI.R.MURALIDHARAN (AROOR)

THIS SALES TAX REVISION HAVING COME UP FOR ADMISSION ON 10/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L. DATTU, CJ. & K.M. JOSEPH, J.

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S.T.Rev. No.399 of 2006

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Dated this the 10th day of December, 2007.

ORDER

H.L.DATTU, CJ,

State, being aggrieved by the order passed by the Sales Tax Appellate Tribunal in T.A. 290 of 2005 dated 20.12.2005, has presented this revision petition.

2. The State has framed the following questions of law for our consideration and decision. They are as under:

> "A. Whether the Appellate Tribunal is right in law in the facts and circumstances of the case in holding that the purchase turnover of water is not exigible to tax under Section 5A of the KGST Act?
>
> B. Is not the Tribunal in error in its construction/interpretation on Section 5A, while holding that purchase turnover of water is not exigible to tax under Section 5A?
>
> C) Is not the decision of the Tribunal unsustainable and liable to be annulled in view of 2006(3) K.L.T. 380?"

3. The questions of law framed by the revenue is no more debatable in view of the declaration of law made by this court in the case of **State of Kerala v. Cochin Shipyard Ltd.** (2006(3) K.L.T. 380). In the said decision the court has observed as under:

> "The intention of the legislature is to bring to purchase tax in either event of consumption of goods in the manufacture of goods for sale or consumption of goods in any other manner. Once goods are utilised in the construction of buildings the goods cease to exist or cease to be available in that form for sale or purchase so as to attract the tax and therefore the correct meaning to be attributed

to the said provision would be that tax will be attracted when such goods are consumed in the manufacture of other goods or are consumed otherwise. Even if water is consumed otherwise S.5A of the Act would apply. Water charges paid by the petitioner is exigible to purchase tax under S.5A of the Act even if not consumed for making of the end product since he has consumed it otherwise."

4. In view of the law declared by this court, the questions of law framed by the revenue requires to be answered in favour of the revenue and against the assessee.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE

K.M. JOSEPH,
JUDGE

sb.